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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91191371
Party	Plaintiff ClearChoice Holdings, LLC
Correspondence Address	Brian A. Colao Dykema Gossett PLLC 1717 Main St., Suite 4000 Dallas, TX 75201 UNITED STATES nmassand@dykema.com
Submission	Motion to Extend
Filer's Name	Brian A. Colao
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Signature	/Brian A. Colao/
Date	05/10/2011
Attachments	2011.05.10 Opposer's Emergency Motion to Amend Schedule.pdf ( 10 pages ) (153342 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

CLEAR CHOICE HOLDINGS, LLC,

Opposer,

v.

DALE D. GOLDSCHLAG, DDS

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Opposition No. 91191371

**OPPOSER'S EMERGENCY MOTION  
TO AMEND SCHEDULE**

Opposer, Clear Choice Holdings, LLC, files this Emergency Motion to Amend Schedule and, in support thereof, respectfully shows as follows:

**I. INTRODUCTION**

On April 12, 2011, the following deadlines were set:

<b>Date</b>	<b>Deadline</b>
May 11, 2011	Discovery Closes
June 25, 2011	Plaintiff's Pretrial Disclosures
August 9, 2011	Plaintiff's 30-day Trial Period Ends
August 24, 2011	Defendant's Pretrial Disclosures
October 8, 2011	Defendant's 30-Day Trial Period Ends
October 23, 2011	Plaintiff's Rebuttal Disclosures
November 22, 2011	Plaintiff's 15-Day Rebuttal Period Ends

Shortly after these deadlines were set and as the parties were discussing potential settlement, on April 22, 2011, Clear Choice's counsel requested Applicant's counsel to provide potential dates for the deposition of Applicant. See April 22, 2011, email, attached hereto as Exhibit A. Applicant's

counsel did not provide any potential dates in response to this request. Subsequently, on April 27, 2011, counsel for Clear Choice, once again, requested potential deposition dates for Applicant. *See* April 27, 2011, email, attached hereto as Exhibit B. Applicant's counsel did not provide any potential dates in response to this request. Counsel for Clear Choice, again, requested potential deposition dates on May 2, 2011. *See* May 2, 2011, email, attached hereto as Exhibit C. This request also went unheeded. Now, with the discovery deadline looming, Clear Choice still has not been able to secure the deposition of Applicant. Accordingly, Clear Choice requests that the schedule in this matter be amended so that the deposition of Applicant can occur.

## **II. ARGUMENT AND AUTHORITIES**

"Rule 16(b) provides that once a scheduling order has been entered, it 'may be modified only for good cause and with the judge's consent.'" *Marathon Financial Ins., Inc. v. Ford Motor Co.*, 591 F. 3d 458, 470 (5th Cir. 2009) (quoting Fed. R. Civ. P. 16(b)). In the present case, there is good cause to amend the scheduling order.

In the present case, there is good cause to amend the schedule to allow time for the deposition of Applicant. Clear Choice has made several attempts to secure the deposition of Applicant, but has not yet been successful. This deposition is essential to Clear Choice's preparation of its case, and Clear Choice will be severely prejudiced if it is not permitted to take the deposition. Therefore, extending the present deadlines for sixty days to allow for the deposition of Applicant is appropriate.

## **III. CONCLUSION**

As stated above, there is good cause to amend the schedule in this matter according to allow for the deposition of Applicant. Therefore, Clear Choice requests that the present deadlines be extended for sixty days to permit time for the deposition.

Respectfully submitted,

/s/ Brian A. Colao

Brian A. Colao

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**ATTORNEYS FOR PLAINTIFF**

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of Clear Choice Holdings, LLC's Opposer's Emergency Motion To Amend Schedule was served via email and Certified Mail, Return Receipt Requested to the party listed below at the address indicated on this the 10<sup>th</sup> day of May, 2011.

Adam B. Kaufman  
Adam B. Kaufman & Associates, PLLC  
585 Stewart Ave., Suite 302  
Garden City, NY 11530

/s/ Brian A. Colao

Brian A. Colao

**CERTIFICATE OF CONFERENCE**

Counsel for Plaintiff has conferred with counsel for Defendants, on May 6, 2011 and Defendants oppose the relief requested.

/s/ Brian A. Colao

Brian A. Colao

# **EXHIBIT A**

**Massand, Neal**

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**From:** Massand, Neal  
**Sent:** Friday, April 22, 2011 1:33 PM  
**To:** 'Adam B. Kaufman'  
**Subject:** RE: Clear Choice

Adam,

In case we can't work out a settlement, can we try to schedule a deposition of your client in early May? I assume you are still opposed to deadline extensions. If not, please let me know that as well.

Thanks,

Neal

# **EXHIBIT B**

**Massand, Neal**

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**From:** Massand, Neal  
**Sent:** Wednesday, April 27, 2011 1:29 PM  
**To:** 'Adam B. Kaufman'  
**Subject:** Clear Choice

Adam,

In follow up to my email from last week, please provide potential deposition dates for your client prior to May 11th.

Thanks,

Neal



# **EXHIBIT C**

**Massand, Neal**

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**From:** Massand, Neal  
**Sent:** Monday, May 02, 2011 11:49 AM  
**To:** 'Adam B. Kaufman'  
**Cc:** Colao, Brian  
**Subject:** RE: Clear Choice

Adam,

Clear Choice will not accept your offer below. The proposed amount is too high. Please let me know when Dr. Goldshlag will be available for a deposition. Also, please let me know if you will agree to a 30 day discovery extension to accommodate his deposition.

Thanks,

Neal



-----Original Message-----

From: Massand, Neal [mailto:NMassand@dykema.com]

Sent: Wednesday, April 27, 2011 2:29 PM

To: 'Adam B. Kaufman'

Subject: Clear Choice

Adam,

In follow up to my email from last week, please provide potential deposition dates for your client prior to May 11th.

Thanks,

Neal

\*\*\* Notice from Dykema Gossett PLLC: To comply with U.S. Treasury regulations, we advise you that any discussion of Federal tax issues in this communication was not intended or written to be used, and cannot be used, by any person (i) for the purpose of avoiding penalties that may be imposed by the Internal Revenue Service, or (ii) to promote, market or recommend to another party any matter addressed herein. This Internet message may contain information that is privileged, confidential, and exempt from disclosure. It is intended for use only by the person to whom it is addressed. If you have received this in error, please (1) do not forward or use this information in any way; and (2) contact me immediately. Neither this information block, the typed name of the sender, nor anything else in this message is intended to constitute an electronic signature unless a specific statement to the contrary is included in this message. DYKEMA